IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.475 of 1992

Decided on : 30.10.2007

State of H.P. **…Appellant.**

Versus

Ashok Kumar **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the appellant : Mr. Som Dutt Vasudeva, Additional Advocate General with Mr. D.S. Nainta, Deputy Advocate General

For the respondent : Mr. Ajay Sharma, Advocate.

Surjit Singh, Judge (oral)

This appeal is directed by the State against the judgment of the Sessions Court, whereby respondent Ashok Kumar, who was charged and tried for offence, under Section 302 of the Indian Penal Code, has been acquitted.

2. Allegations on which the respondent was challaned, charged and tried may be noticed. Deceased Madan Lal and the accused were employed at two embroidery shops adjacent to each other at Amritsar. Both of them were natives of village Sanoh in Amb Tehsil of Una District. Both of them came to their native place three-four days before Raksha Bandhan festival of the year 1991. On 30.8.1991, the deceased disappeared from the village all of a sudden. A day or two after his disappearance, PW-1 Savitri Devi, the mother of the deceased, asked the respondent if he had seen the deceased. The respondent told that he had

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Whether reporters of the local papers may be allowed to see the judgment?

seen him going in the company of an Army man towards Hamirpur. On 23.10.1991, a human skull and some bones were found lying in the jungle near village Sanoh. A pair of V-shaped Chappal was also found lying in the said forest. That pair of Chappal was identified to be that of the deceased by PW-1 Savitri Devi. On 24.10.1991, PW-1 Savitri Devi accompanied by a Member of the Gram Panchayat PW-6 Parkash Chand, proceeded to Police Station, Amb to lodge report with the police. A police official, namely PW-16 S.I. Balwan Singh met them on the way. PW-1 Savitri Devi made a statement to him, which was reduced into writing under Section 154 Cr. P.C. The statement was sent to the Police Station for the formal registration of the case. Police visited the site where the skull and some bones were found lying. The same were taken into possession. The pair of Chappal, produced by PW-1 Savitri Devi, was also taken into possession. On 25.10.1991, the respondent was arrested at Amritsar. He was brought to Police Station, Amb and interrogated on 27.10.1991. He made a disclosure statement leading to the discovery of the pants and shirt of the deceased. He made another disclosure statement on 29.10.1991 pursuant to which a wrist watch was recovered and the same was identified to be that of the deceased by PW-1 Savitri Devi.

3. It came to the notice of the police during investigation that on 30.8.1991, the deceased and the respondent were seen together in the forest from which the skull and some bones were recovered, by PW-11 Ramel Singh. It was also found that the respondent had made extra judicial confessions to PW-4 Manohar Lal and PW-5 Madan Lal at different times on 23.10.1991 at Amritsar. On 24.10.1991, both PW-4 Manohar Lal and PW-5 Madan Lal visited the native place of the respondent and the deceased and stayed there for the night. They both informed one Tilak Raj (not examined as a witness) about the extra

judicial confession made by the respondent. It also came to light during the course of investigation that the respondent made another extra judicial confession to PW-2 Kuldip Kumar on 20.10.1991 and also showed him the skeleton of the deceased in the forest. PW-2 Kuldip Kumar informed PW-6 Parkash Chand, a Member of Gram Panchayat, about the aforesaid extra judicial confession on 20.10.1991 itself and also took him to the site where the skull and the bones were lying. It also came to the notice of the police that from 20th to 22nd October, 1991, Hans Raj, the father of the respondent visited the Police Station, Amb and made inquiries with PW-12 Baldev Singh, who was posted as Home Guard Volunteer at the said Police Station, during that period, if any case had been got registered by the residents of village Sanoh. The skull and the bones recovered from the forest were sent to the Chemical Examiner, who opined that these were of a male human being, aged between 20 and 23 years, and that on superimposition of the skull on the photograph of deceased Madan Lal, it was found that the skull was that of the deceased.

4. Further, it was found during the investigation that 3-4 days prior to Raksha Bandhan, which was on 25th August, 1991, the respondent had borrowed a sword from PW-7 Mehar Chand on the pretext that he wanted to butcher a pig and the said sword had been returned to him 3-4 days later. Blood stains were noticed by the Chemical Examiner near the hilt of that sword.

5. On completion of the investigation, the case was filed against the respondent in the Court of the concerned Judicial Magistrate, who after complying with the requirements of Section 207 Cr. P.C, committed the case to the Sessions Court. The learned Sessions Judge charged the respondent with the offence under Section 302 I.P.C. and on his pleading not guilty put him on trial. At the end of the trial, the learned

Sessions Judge found that the case was not proved beyond reasonable doubt and consequently acquitted the respondent.

6. We have heard the learned Additional Advocate General and gone through the record. We see no reason to disagree with the findings and conclusions drawn by the trial Court with respect to various circumstances sought to be proved by the prosecution against the respondent.

7. The first circumstance, which was sought to be proved against the respondent, was that he and the deceased had been last seen together in the forest where the skull and the bones were found. To prove the circumstances, the prosecution examined PW-11 Ramel Singh. From the conduct of the witness, it appears that he is not trustworthy. The witness testified that he saw the deceased and the respondent together on 30.8.1991, the day since when the deceased had been missing. The witness did not disclose this fact to anybody till 13.11.1991, i.e. 20 days even after the registration of the case, in spite of the fact that he knew that the deceased had been missing since that date and his mother had been searching for him frantically. It is pertinent to note that the witness is the resident of the same village as the deceased and the respondent.

8. Next circumstance sought to be proved by the prosecution is the extra judicial confessions made by the respondent to PW-4 Manohar Lal, PW-5 Madan Lal and PW-2 Kuldip Kumar. PW-4 Manohar Lal and PW-5 Madan Lal have testified that the respondent made extra judicial confessions to them at Amritsar on 23.9.1991 at different times and at different places. They have stated that on the next following day, i.e. 24th September, 1991, both of them went to village Sanoh, that is the native place of the deceased and the respondent, and stayed there in the night and during their stay in that village they informed one Tilak Raj about the confessions made by the respondents to them at Amritsar. The conduct

of the two witnesses shows that what they have stated may not be true. The witnesses were supposed to have informed the mother of the deceased or some other relative of the deceased and in fact the police of the area about the alleged extra judicial confessions made by the respondent to them. But they informed a stranger by the name of Tilak Raj, who according to them, is resident of village Mairi, a village different from the village of the deceased and the respondent. And the prosecution has not bothered even to produce this Tilak Raj in the Court.

9. Respondent is alleged to have made another confessional statement on 20.9.1991 to PW-2 Kuldip Kumar. The witness has stated that on that day he and the respondent had gone to the forest near their village as the respondent told him that they were to collect honey from the forest and that when on reaching the forest he asked the respondent that neither he had brought any *Darat* nor any pot for collection of honey and how could they succeed in the purpose for which they had come to the forest, the latter made a confession that he had killed the deceased with a sword in that forest and his skeleton with clothes, was lying in the forest. He stated that on return to the village he went to the father of the respondent and his father told that the disclosure made to him by the respondent should not be reported to anybody and the clothes worn by the skeleton be removed and destroyed by fire. The witness further stated that the respondent threatened him that in case he reported about the disclosure made to him to anybody, he will be done to death. He stated that in addition to informing the father of the respondent about the disclosure, he informed PW-6 Parkash Chand, a Member of the Panchayat also. When asked why did not he inform the mother of the deceased or any relative of the deceased, he stated that because of threat given to him by the respondent he did not inform them. The explanation is

not believable. If he could inform PW-6 Parkash Chand, despite the alleged threat, why could not he inform the mother of the deceased.

10. PW-6 Parkash Chand, a Member of Gram Panchayat, stated that PW-2 Kuldip Kumar informed him about the confessional statement made by the respondent, on 23.10.1991 and thereafter PW-2 Kuldip Kumar took him to the forest where the scattered bones were lying. The statements made by PW-6 Parkash Chand as also by PW-2 Kuldip Kumar do not inspire confidence. PW-2 Kuldip Kumar says that he informed PW-6 Parkash Chand on 20.10.1991 itself, but PW-6 Parkash Chand says that he was informed on 23.10.1991. Further PW-6 Parkash Chand says that when on 23.10.1991, a pair of Chappal was found in the forest and it was identified by PW-1 Savitri Devi to be of her son Madan Lal, who had been missing since 30.8.1991, PW-1 Savitri Devi left for the Police Station, Amb, to lodge the report, he also gave her company and on the way PW-16 Balwan Singh, Sub Inspector met them to whom PW-1 Savitri Devi made a detailed report, which was reduced into writing in the form of her statement Ext. PA. However, in Ext.PA, which was recorded on 24.10.1991, there is no mention of the alleged confessional statement of the respondent about which PW-6 Parkash Chand had been apprised by PW-2 Kuldip Kumar on 23.10.1991. This is despite the fact that he was accompanying Savitri Devi and also the fact that his testimony gives the impression that the mother of the deceased, namely, PW-1 Savitri Devi had been made aware of the alleged confessional statement.

11. Next circumstance sought to be proved by the prosecution is with regard to the recovery of the clothes and the wrist watch of the deceased allegedly at the instance of the respondent. An over all reading of the statements of PW-2 Kuldip Kumar suggests that when he saw the skeleton for the first time, it was covered with the clothes of the deceased. However, the alleged disclosure statement made by the respondent,

which is Ext.PG, is to the effect that the clothes were removed from the dead body of the deceased soon after his death and concealed in the bushes near a Nullah. Now, when the skeleton was covered by clothes on 20.10.1991, per deposition of PW-2 Kuldip Kumar, the question of the same having been removed by the respondent from the dead body soon after the killing of the deceased and their concealment in the bushes, did not arise. This fact alone is sufficient to disbelieve the prosecution story with regard to the recovery of the clothes of the deceased at the instance of the respondent.

12. It is also the allegation of the prosecution that the respondent got recovered the wrist watch of the deceased. Evidence with respect to this allegation is also highly doubtful. Initially, the respondent is alleged to have made statement about concealment of wrist watch on 27.10.1991, at the time of his making the statement about the concealment of the clothes of the deceased. The wrist watch was not found at the site disclosed in this statement. The respondent was again interrogated on 29.10.1991 and this time he made statement, record of which is Ext. PH, and the wrist watch is alleged to have been recovered pursuant to this statement. It is the case of the prosecution itself that there were blood stains on the clothes of the deceased. The report of the Chemical Examiner also shows that the clothes of the deceased had stains of human blood and out of the said clothes, the pyjama, as per the said report, had stains of human blood of group “A”. However, no stains of human blood were noticed on the wrist watch. It appears that the story of the recovery of the wrist watch at the instance of the respondent has been cooked up to connect him with the commission of the crime.

13. Testimony of PW-12 Baldev Singh about the visit of the father of the respondent in no way connects the respondent with the commission of the crime. What the witness has stated is that the father of

the respondent enquired from him if any case had been registered at the instance of the residents of village Sanoh. He does not say that inquiry was with regard to any specific case. Moreover, the witness says that he told the father of the respondent that no case had been registered after making inquiries with the "Munshi" of the Police Station. The "Munshi" was not examined to seek corroboration to the testimony of PW-12 Baldev Singh.

14. The above stated position apart, even the skull and the bones are not proved to be those of the deceased. No doubt the Chemical Examiner vide report Ext.PS has opined that on superimposition of the skull on the photograph of the deceased, it was found that the skull was that of the deceased, but there is absolutely no evidence on record if any photograph of the deceased had been taken into possession by the Investigating Officer of the case. Not only this, there is no evidence that any photograph of the deceased or for that matter the photograph of any other person, had been sent to the Chemical Examiner for comparison with the skull. The Chemical Examiner in the report has given a list of articles which were received by him from the police. In the said list, there is no mention of any photograph, leave alone the photograph of the deceased. Not only this, there is no evidence that the deceased had ever been photographed. The mother of the deceased PW-1 Savitri Devi did not say that any photograph of the deceased was available with her and it was handed over to the police during the investigation of the case. PW-16 Balwan Singh, the Investigating Officer of the case, also does not say that any photograph of the deceased had been made available to him by PW-1 Savitri Devi or for that matter by any other witness and he sent that photograph to the Chemical Examiner for comparison with the skull recovered from the spot. Thus, even this much does not stand proved

that the skull and the bones recovered from the forest were of the deceased.

15. As a result of the above stated position, we see no reason to differ with the findings and the conclusions of the trial Court. Consequently, the appeal is dismissed.

(Surjit Singh), J

October 30 , 2007(ss) **(Surinder Singh), J**